THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 414 of 2001
Old F.A.F.O. No. 257 of 1995

Oriental Insurance Co. Ltd. through its Asstt. Manager,
Divisional Office No. 1, 16-A, M.G. Marg, Allahabad.

…Appellant

Versus

1. Smt. Sushila Devi wife of late Sri Nand Kishore Arya,
2. Km. Manorama D/O late Sri Nand Kishore Arya,
3. Bhupesh Kumar Son of late Sri Nand Kishore Arya
4. Km. Shakuntala Kumari, D/O late Sri Nand Kishore Arya
5. Giriraj Kumar (minor) S/O late Sri Nand Kishore Arya,
6. Jitendra (minor) Son of late Shri Nand Kishore Arya.
7. Km. Indira (minor) daughter of late Sri Nand Kishore Arya,
8. Smt Sajimati Devi wife of late Shri Ganga Ram,
   All minors are represented through their natural guardian and Mother Smt. Sushila Devi, the respondent no.1. All residents Of B-282, Avas Vikas Colony, Rudrapur, Tehsil Kichha, District Nainital. (Claimants)
9. N.N.Sharma, Resident of C-3/294 Lodhi Road, New Delhi.

…Respondents.

Sri T.A.Khan, learned counsel for the appellant.
Sri Lalit Sharma, Adv. learned counsel for the claimant-respondents.

Date June 13, 2006.

P.C: Hon. B.S. Verma, J.

This appeal under Section 173 of the Motor Vehicles Act, 1988 (***for short the Act***) is directed against the judgment and award dated 1-5-1995, passed by the Motor Accident Claims Tribunal/Special Judge Nainital (***in short the Tribunal***) in Motor Accident Claim Petition No. 213 of 1992 moved under Section 140 of the Act on the principle of no-fault liability, whereby compensation of Rs.50,000/- along with interest @ 10% per annum has been awarded in favour of the claimants against the Insurance Company-appellant.

At the outset, it may be mentioned that the award of interim compensation under Section 140 of the Act is subject to adjustment in the final award passed by the Claims Tribunal and the learned counsel for the appellant-Insurance Company has fairly conceded to this fact.

Brief facts giving rise to the present appeal that husband of the claimant no.1 Sushila Devi, Nand Kishore Arya, lost his life as a result of injuries suffered by him in a vehicular accident which occurred on 29-02-1993 at 6.30 p.m. when he was coming back to his house from Rudrapur market involving Maruti Car No. DI-4C A-3577, which was being driven rashly and negligently by its driver. It was alleged that the offending vehicle was insured with the appellant. The deceased was aged about 50 years.

Before the learned Tribunal the factum of death of the deceased was not denied and it was stated that the vehicle was duly insured at the time of accident. The learned Tribunal on the basis of no fault liability awarded compensation of Rs. 50,000/- along with interest @ 10% per annum in favour the claimants for the death of Nand Kishore Arya.

The contention of the learned counsel for the appellant is that the learned Tribubnal erred in awarding the interim compensation of Rs. 50,000/- towards no fault liability because the accident had taken place prior to 14-11-1994 when the amending Act No. 54 of 1994 came into force. It is true that the accident occurred on 29-02-1992, but the learned Tribunal has passed the order after commencement of the Act i.e. on 1.5.1995. The Insurance Company may take proper recourse subject to the decision of the Tribunal at the time of passing final order on the application under Section 166 of the Act.

Since the amount of interim compensation on the principle of no fault liability is subject to adjustment in the final award on merits of the case and it is open to the insurer to seek redressal of its grievance subject to the final decision of the claim petition under Section 166 of the Act by the Tribunal.

Accordingly, the appeal deserves to be dismissed and is hereby dismissed. No order as to costs.

The amount in deposit with this Court, if any, shall be transmitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants as directed by the learned Tribunal.

(B.S.Verma, J.)

RCP